

Appeal of Lomita Plaza, Inc.

powers including a requirement that it pay taxes for the years after 1956; and that, in any event, a revivor would not retroactively validate this appeal. The Franchise Tax Board concludes that after Appellant's powers are properly revived and the assessment for the year 1955 is paid, Appellant may file a claim for refund and, if the claim is denied, an appeal may then be taken pursuant to Sections 26075 et seq. of the Revenue and Taxation Code..

The request for a dismissal must be granted. Section 23301 of the Revenue and Taxation Code provides that "Except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer shall be suspended ..." for failure to pay a franchise tax which is due. While under suspension for non-payment of taxes a corporation is "shorn of all rights save those expressly reserved by the statutes." (Ransome-Crummey Co. v. Superior Court, 188 Cal. 393.) It may not commence or defend an action, nor appeal from an adverse decision. (Boyle v. Lakeview Creamery Co., 9 Cal. 2d 16; Cleveland v. Gore Bros., 14 Cal. App. 2d 681; Ocean Park Bath House & Amusement Co. v. Pacific Auto Park Co., 37 Cal. App. 2d 158; Baker v. Farra, 78 Cal. App. 2d 578; Fidelity Metals Corp. v. Risley, 77 Cal. App. 2d 377; Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp. 155 Cal. App. 2d 46.) We have previously held specifically that a suspended corporation may not appeal to this Board. (Appeal of Atlantic & Pac. Wrecking Co., Cal. St. Bd. of Equal., July 22, 1958 (CCH 2 Cal. Tax Cases, Par. 200-899), (P-H St. & Loc. Tax Serv., Cal., Par. 13, 180).)

There is nothing in the pertinent statutes or in the decided cases which permits an exception, allowing a corporation to exercise its powers to the extent of contesting a proposed assessment for a given year in a case where the suspension is for failure to pay the tax for a succeeding year. We cannot take it upon ourselves to read such an exception into the statutes.

Even if Appellant were now revived, the revivor would not validate this appeal. Pursuant to Section 25666 of the Revenue and Taxation Code, the action of the Franchise Tax Board on a protest to a proposed assessment becomes final thirty days after the notice of action is issued unless an appeal is made within that time. Since there is no provision therefor in the statutes, a revivor may not be given a retroactive effect. (Ransome-Crummey Co. v. Superior Court, supra.) In Cleveland v. Gore Bros., supra, it was held that the statute of limitations with respect to a cause of action was not tolled from the time that a suspended corporation commenced the action until the corporation was revived. Upon the same principle, the time limitation for filing this appeal would not be tolled or extended pending a revivor of the powers of the Appellant.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the appeal of Lomita Plaza, Inc., from the action of the Franchise Tax Board on a protest to a proposed assessment of additional franchise tax in the amount of \$1,577.95 for the taxable year 1955 be and the same is hereby dismissed,

Done at Sacramento, California, this 7th day of March, 1961, by the State Board of Equalization

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

Geo. R. Reilly, Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary